IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

CRL.A.No. 1678 of 2003(D)

SC.392/2000 OF THE COURT OF ADDITIONAL SESSIONS (AD-HOC COURT-II, KASARAGOD)

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APPELLANTS/ACCUSED 1 AND 2:

1. PRAVEEN KUMAR, AGED 29 YEARS,
   S/O.KRISHNAN, ASHOK NAGAR,
   NR.ROOPESH TALKIES, KASARAGOD.

2. K.P.DINESHAN, AGED 29 YEARS,
   S/O.SUKUMARAN, ADKATH BAYAL,
   NR.SUBRAMANIYA SWAMI TEMPLE,
   KASARAGOD.

BY ADV. SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENT/RESPONDENT:

STATE - REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.K.R.SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY, J.

CRL.Appeal No.1678 of 2003

Dated this the 27th day of July, 2007

Judgment

Appellants are the accused in Sessions Case No.392 of 2000 on the file of the Additional Sessions Court (Adhoc) - II, Kasaragod. On 22.2.1999, at about 18.30 hours, when PW3 and party were conducting patrolling, they interrupted a black chetak scooter bearing registration No. KL/14-A 7058 which was coming from Mangalore side. It contained a bag with 125 bottles of SK Delux Whisky containing 180 ml. each and, therefore, they were charge-sheeted for offences punishable under section 55 (a) of the Abkari Act.

2. PW1, head constable, was accompanying the detecting officer. PW2 is the attestor. PW3 is the Sub Inspector of Kumbla Police station who detected the crime. PW4 is an attestor to Ext.P3 seizure mahazar. Even though he admitted the signature, he turned hostile to the prosecution. PW2 is an independent witness who attested the scene mahazar and who did not support the prosecution story and he was declared hostile. Even though he admitted his signature, according to him, he

signed the mahazar subsequently before detection. That witness was correctly disbelieved by the trial court. What was seized was 125 bottles of SK Delux Whisky. Ext.7 is the chemical analysis report which certified that ethyl alcohol content was detected in the sample items 1 and 2 at 42.89% and 43.11% respectively. The defence case was that the detecting officer registered the case falsely. The scooter was found in an abandoned stage and the registered owner was not charge-sheeted, but, there is no case for the accused that the investigating officer or any one of the police party was inimical towards them to make false charges on them. Appellants were in possession of the scooter bearing registration No.KL/14-A 7058 at the time of checking and they were caught red-handed while A1 was riding the scooter with A2 as pillion rider. 125 bottles of SK Delux Whisky containing 180 ml. each was seized from their scooter. The documents actually seized clearly proved the guilt of the appellants. I am of the view that no grounds are made out for interfering in the conviction made by the Sessions Court. The offence is punishable under section 55 (a) of the Abkari Act. Minimum punishment is fine of Rupees One lakh with imprisonment.

They were directed to undergo rigorous imprisonment for one year together with fine of Rupees one lakh each. Since Rupees One lakh is the minimum punishment, I see no ground to interfere in the finding imposed. But, considering the huge amount of fine, I reduce the imprisonment of one year to that of imprisonment for one month each in default of payment of fine, both accused have to undergo simple imprisonment for three months.

The appeal is allowed with regard to the sentence only. Fine, if already paid, should be adjusted from the fine to be paid. I make it clear that appellants are entitled to the right of set off.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

Crl.Appeal NO.1678/2003

Judgment

Dated:27th July, 2007